Rethinking Airport Screening Policy

Testimony of
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My name is Robert Poole. I am the Director of Transportation Policy at the Reason Foundation. Much of my work deals with aviation policy, including airport security. Prior to my current position at Reason, my principal area of expertise was competitive contracting of public service delivery; I am the author of the first full-length book on the subject, back in 1980 (*Cutting Back City Hall*, Universe Books, 1980).

A Major Design Flaw in TSA

I served as an advisor to the House Transportation & Infrastructure Committee in the days following the 9/11 attacks, as Congress was grappling with how to improve aviation security. The legislation that created the TSA—the Aviation & Transportation Security Act (ATSA) of 2001—built in a conflict of interest in the new agency. On the one hand, TSA is designated as the agency that establishes transportation security policy and regulates those that provide transportation operations and infrastructure (airlines, airports, railroads, transit systems, etc.). But on the other hand, TSA itself is the operator of the largest component of airport security—passenger and baggage screening.

When it comes to screening, therefore, TSA has a serious conflict of interest. With regard to all other aspects of airport security—access control, perimeter control, lobby control, etc.—security is the responsibility of the airport, under TSA's regulatory supervision. But when it comes to screening, TSA regulates itself. Arm's-length regulation is a basic good-government principle; self-regulation is inherently problematic.

First, no matter how dedicated TSA leaders and managers are, the natural tendency of any large organization is to defend itself against outside criticism and to make its image as positive as possible. And that raises questions about whether TSA is as rigorous about dealing with performance problems with its own workforce as it is with those that it regulates at arm's length, such as airlines and airports. This comes up again and again in news stories—such as a *USA Today* investigation in 2007 found that TSA screeners at Chicago O'Hare and LAX missed three times as many hidden bomb materials as did privately contracted screeners at SFO. TSA's 2007-08 studies comparing TSA and private screening costs were criticized by GAO as highly flawed and misleading.

Second, having TSA operate airport screening conflicts with the idea of each airport having a unified approach to security, with everyone responsible to the airport's security director. Numerous examples of divided security have been reported at airports over the past decade, where certain responsibilities have fallen between the cracks and neither the airport nor the TSA was on top of the problem. Examples include video surveillance cameras at Newark and access control doors at Orlando.

Out of Step with Other Countries

In 2008 the OECD's International Transport Forum commissioned me to do a research paper comparing and contrasting aviation security in the United States, Canada, and the European Union. In the course of that research, I was surprised to discover that the conflict of interest that is built into TSA does not exist in Canada or the EU countries. If you go to Canada or any of the major EU countries, airport screening looks similar to what you experience at U.S. airports. But the way in which this service is provided and

regulated is quite different. In all these cases, the policy and regulatory function is carried out by an agency of the national government, as in the United States. But actual airport screening is carried out either by the airport itself or by a government-certified private security firm. Legally, in Europe airport security is the responsibility of the airport operator. Whether the screening is carried out by the airport or a security company varies from country to country, but in no case is it carried out directly by the national government aviation security agency.

In Canada, the legislative body created an aviation security agency following 9/11--the Canadian Air Transport Security Authority (CATSA). Transport Canada remains responsible for airport security policy and regulation, while CATSA is responsible for the mechanics of airport security, such as development of biometric ID cards and implementing a system of airport screening. But rather than providing the screening function itself, CATSA certifies private security companies and contracts with them to provide screening services at the 89 airports where such services are provided.

Separation of aviation security regulation from the provision of security services is called for by the International Civil Aviation Organization (ICAO), to which the United States (along with 188 other countries) is a signatory. This policy is found in ICAO Annex 17, Standard 3.4.7. Under the Chicago Convention which created ICAO, "contracting states are required to notify [ICAO] of any differences between their national regulations and practices" and ICAO's international standards. On this point, the United States has failed to notify ICAO that it does not comply.

The United States Came Close to Adopting the EU/ICAO Model

In the difficult months following the 9/11 terrorism attack, there was intense political pressure to improve U.S. aviation security. Despite the fact that the low-quality airline-operated screening was not responsible for the 9/11 disaster, numerous commentators and public officials called for "federalizing" airport screening. The Senate's version of ATSA embodied this view, calling for a new federal workforce to be parachuted into some 450 U.S. airports; it passed 100-0. The House, by contrast, took somewhat more time and learned that only two other countries had delegated airport screening to *airlines* as an unfunded mandate (Bermuda and Canada). They also heard testimony about the performance contracting model widely used in Europe well before 2001, a fact documented in a GAO report that year.

The resulting House bill removed screening from the airlines and shifted it to airports, under federal regulatory supervision and permitted EU-type performance contracting. Both airport organizations, ACI-NA and AAAE, supported the House bill, which passed by a wide margin, 286-139. But in the subsequent conference committee, the Senate version of federalizing security largely prevailed. The only consolation prize given to the house was a five-airport opt-out pilot program, and the promise that eventually all airports would be given the right to opt out of TSA-provided screening.

TSA Contracting vs. Performance Contracting

Competitive contracting has been widely used at local, state, and federal levels of government. In recent decades, it has been embraced by elected officials of both parties as a way of achieving greater value for the taxpayer's dollar. One of the most influential books on the subject was *Reinventing Government* by David Osborne and Ted Gaebler, advisors to Vice President Gore's National Performance Review project. Under this approach, a government wanting a service delivered more cost-effectively must define the outcomes it wishes to achieve, leaving qualified bidders free to propose their own procedures and technology for achieving those outcomes. Such contracts typically stress measurement of outcome variables, and often provide financial penalties and bonuses.

By contrast, under the Screening Partnership Program (SPP) set up by TSA's interpretation of the opt-out provisions in the ATSA legislation, the entire process is micromanaged by TSA. Instead of permitting the airport in question to issue an RFP to TSA-certified firms, TSA itself selects the company and assigns it to the airport. And TSA itself manages the contract with the screening company, rather than allowing the airport to integrate screening into its overall security program, under TSA supervision and regulation. Moreover, TSA spells out procedures and technology (inputs) rather than only specifying the desired outcomes of screening, thereby making it very difficult for screening companies to innovate. Moreover, the ATSA legislation mandates that compensation levels for private screeners be identical to those of TSA screeners.

Under a performance contracting approach, with screening devolved to the airport level, TSA would continue to certify screening companies that met its requirements (e.g., security experience, financial strength, screener qualifications, training, etc.). It would also spell out the screening performance measures (outcomes) that companies or airports would be required to meet. Airports would be free to either provide screening themselves (with screeners meeting those same TSA requirements) or to competitively contract for a TSA-certified screening company. Companies bidding in response to the airport's RFP would propose their approach to meeting the performance requirements, in terms of staff, procedures, and technology. This could include, for example, cross-training screeners to carry out other airport security duties, such as access and perimeter control. The airport would select the proposal that offered the best value, subject to TSA approval. TSA, in its role as regulator, would oversee all aspects of the airport's security operations, including screening.

Even Today's Limited SPP Shows Private-Sector Benefits

Observers such as the GAO have noted how little flexibility private screening contractors have over the variables involved in providing this service, given the narrow confines of ATSA and TSA's highly centralized way of implementing SPP contracts. Yet the limited available information suggests that even within those constraints, the private sector is more flexible and delivers more cost-effective screening.

The most dramatic data come from a study carried out by the staff of the House Transportation & Infrastructure Committee in 2011. They obtained data on screening at two major airports, LAX with TSA screening and SFO with contractor screening. Both are Category X airports, the highest level in TSA's categorization of airports. The study

found that the company at SFO is dramatically more productive, processing an average of 65% more passengers per screener than TSA screeners at LAX. If the screeners at LAX had comparable productivity, the screener workforce at LAX could be 867 persons smaller, saving $33 million per year.

Given that the company serving SFO is required by law to pay the same wages and benefits to its screeners as TSA, and to use essentially the same procedures and equipment, what accounts for this enormous difference in productivity? One factor is a 58% higher attrition rate for LAX screeners, compared with those at SFO. That means significantly greater recruitment and training costs for screening at LAX. Another result of higher turnover is that the LAX screener workforce needs to be backed up by the expensive TSA National Deployment Force, to fill in temporary vacancies. No such backup is needed at SFO. Third, the private sector has done better than TSA at hiring and retaining part-time screeners to handle peak periods, rather than staffing up with enough full-timers to handle peaks and therefore paying some of them for unproductive off-peak hours. Overall, the study estimated that screening at LAX would cost $42 million less per year if it were carried out via an SFO-type screening contract.

Neither the outside study that TSA commissioned from Catapult Consultants in 2007 nor TSA's own study that was sharply criticized by the GAO identified these major productivity differences. Both focused mostly on accounting costs, omitting various overhead costs and extras such as the cost of using the National Deployment Force. Those essentially "inside" studies created the misleading impression that it costs more, rather than less, to contract with qualified security firms for airport screening.

Recommendations

Based on the foregoing assessment, I have two recommendations for improving airport screening.

The most urgent one is to further reform the current SPP. Recent legislation that puts the burden of proof on TSA in denying an airport's request to opt out of TSA-provided screening is a modest step in the right direction, but does not correct TSA's overly centralized approach. SPP should be further reformed so that:

- The airport, not TSA, selects the contractor, selecting the best-value proposal from TSA-certified contractors.
- The airport, not TSA, manages the contract, under TSA's overall regulatory oversight of all security activities at the airport in question.

I believe these changes could be made by directing TSA to adopt them as policy changes, without the need to revise the actual language of the ATSA legislation.

Second, I recommend revising the ATSA legislation to remove the conflict of interest that Congress built into that law. The revision would devolve the responsibility for passenger and baggage screening from TSA to individual airports, as part of their overall security program. Airports would have the option of either hiring a qualified screener workforce or contracting with a TSA-certified security firm. As is already standard practice when airports join SPP, current TSA screeners would have first right to

screening positions at the airports shifting over, subject thereafter to the airport's or the company's rules and human resources policies. This change would produce greater accountability for screening performance and would also bring the United States into full conformity with ICAO regulations.

This concludes my testimony. I would be happy to answer questions.